IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

APPEAL FROM ORDER NO.672 OF 1996

Sashikant Vithalrao Deshmukh ... Appellant

V/s.

Smt.Sarasabai Eknath Gharge & Ors. ... Respondents

Mr.A.Y. Sakhare with Sanjeev Kadam for Appellant
Mr.Vijay Patil for Respondents.1 to 4
Mr.N.V. Walawalkar for Respondent No.6

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **NOVEMBER 29, 2004**

ORAL JUDGMENT:

. By consent, the order dismissing Exhibit 5 application is set aside. It appears that in Civil Application No.3330 of 1996, the following order has been passed on 12.7.1996 by Lodha, J.:

> 1. Mr.Sakhare, the learned Counsel for the petitioner submits that so far as the civil application is concerned, no relief is required against Respondents Nos.1 to 5 and therefore, service on the said Respondents as regards Civil Application be dispensed with. Order accordingly.
>
> 2. Rule, returnable forthwith. Mr.Walawalkar waives service on behalf of Respondent No.6.
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> 3. Mr.Walawalkar submits that pursuant to the order dated 22nd January, 1996, the Respondent No.6 was permitted to harvest the Harbara crop by depositing Rs.1200/-. Mr.Walawalkar submits that Respondent No.6 now is prepared to deposit

Rs.10,000/- every year in the trial Court till the disposal of the appeal if the Respondent No.6 is permitted to sow and harvest the crop on the disputed land. On enquiry being made from Mr.Sakhare about the yield from this land, the learned counsel for the appellant submitted that the yield from this land would be around Rs.10,000/-. In this view of the matter, I am of the view that interest of justice will be served if the following order is made on the civil application pending disposal of the Appeal from Order:-

i) The Respondent No.6 is permitted to sow and harvest the crops on the disputed land during the pendency of the appeal subject to deposit of Rs.10,000/- every year by him before the trial Court;

ii) The deposit of Rs.10,000/- shall be made by the Trial Court every year on/or before 31st December of the said year and first deposit shall be made on/or before 31st December, 1996;

iii) Upon such deposit being made, the trial Court shall invest the said amount in any of the Nationalised Bank initially for a period of 3 years and thereafter renewable every year till further orders from this Court. The amount so deposited and interest accrued thereon shall be subject to the final orders in the appeal at the time of its disposal.

2. Parties agree that the following order be passed:

i) Respondent No.6 may sow and harvest the crops on the suit lands during the pendency of the suit subject to his depositing Rs.10,000/- every year on or before 31st December every year in the trial Court;

ii) On such deposit being made, the trial Court

shall invest the amount in a nationalised bank for a period of three years to be renewed thereafter each year till the suit is disposed of.

iii) The amount so deposited and interest accrued thereon shall be subject to the decision of the trial Court in the suit.

3. The trial Court to dispose of the matter expeditiously and in any event by 31.12.2005.

4. Appeal from Order is disposed of in the above terms.